

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL NO. 01-CV-3382
)	Hon. Dennis M. Cavanaugh
9.67 ACRES OF LAND, More or Less,)	
Located at 350 Mt. Pleasant Ave.,)	
Borough of Wallington, Bergen County,)	
New Jersey,)	
)	
Defendant.)	
)	

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred in connection with the release and threatened release of hazardous substances at the Industrial Latex

Superfund Site, comprising 9.67 acres more or less located at 350 Mt. Pleasant Avenue, Borough of Wallington, Bergen County, New Jersey (“the Defendant Property”). The United States alleged that the Defendant Property is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. The United States asserted in the complaint, and continues to assert, that the Defendant Property is liable in rem for costs incurred in connection with the government’s response action.

C. The United States claims that it incurred more than \$42,593,768.19 (through June 15, 2001) as demonstrated by the cost summaries attached hereto (Attachment A) and that it has not recovered any of its response costs incurred in connection with the Defendant Property.

D. The United States also claims that its response action, which was completed in 2001, increased the Fair Market Value of the Defendant Property above the Fair Market Value of the Defendant Property that existed before the response action was initiated.

E. The United States served copies of the Complaint in this matter on all individuals, business entities and government entities that might have

liens, claims or other interests in the Defendant Property, as reflected in the title records of Bergen County, New Jersey, and in the Site files maintained by U.S. EPA.

F. On or about July 17, 2001, the United States served a copy of the Complaint and a Notice of Complaint Against Real Property to both the titleholder of record, Carlstadt Moshen Realty Corporation, at its address of record and its attorney of record, Thomas A. Blumenthal, Esq., Ridgefield Park, New Jersey. The United States also posted a Notice of Complaint Against Real Property on the Site.

G. On or about January 5, 1988, U.S. EPA perfected a lien on Defendant Property pursuant to Section 107(I) of CERCLA, 42 U.S.C. § 9607(I). No party contested this action.

H. Interested Parties filed Answers and Statements of Interest in the Defendant Property in this action. No other parties, including the owner of record, filed answers in this case. Interested Parties do not dispute that: (1) the Defendant Property is a "facility" as defined by CERCLA, 42 U.S.C. § 9601(9); (2) there has been a release or threatened release of a hazardous substance from the site; (3) the release or threatened release has caused the United States to incur response costs; and (4) the owner of

the Defendant Property is a liable party pursuant to 42 U.S.C. § 9607(a).

I. On or about May 17, 2000, and as amended August 27, 2001, the Administrator of the New Jersey Spill Compensation Fund perfected a lien on Defendant Property in the amount of \$40,662.47, pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11f and g.

J. The New Jersey Spill Compensation Fund and the New Jersey Department of Environmental Protection claim they have incurred more than \$2,747,045.73 in response costs in addition to on-going oversight and monitoring expenses and that they have not recovered any of these costs incurred in connection with the Defendant Property.

K. On April 10, 1984, a mortgage lien on the Defendant Property was perfected by Jerry Lippman. This mortgage was assigned to Lipwall, Inc., on November 1, 1988.

L. Lipwall, Inc., claims that its mortgage lien on the Defendant Property amounts to \$7,583,282.65 (as of October 1, 2001, plus accumulated interest from October 1, 2001).

M. Jerry Lippman obtained a judgment lien resulting from the June 27, 1990 United States District Court judgment in the amount of \$161,724.26. The judgment lien with accrued post judgment interest was

\$281,311.26 as of October 1, 2001 and has accumulated post-judgment interest from October 1, 2001.

N. The Borough of Wallington claims that its tax lien on the Defendant Property is \$8,976,452 as of December 31, 2004.

O. In September 2001, U.S. EPA completed its response action at the Site. The Notice of Intent to Delete the site from the National Priorities List of Superfund Sites states that the site has been cleaned up to an unrestricted, residential use standard. This notice was published in the Federal Register on 12/9/2002, Volume 67, Number 236, Pages 72888-72890. The Notice of Deletion (from the National Priorities List) appeared in the Federal Register on 4/21/2003, Volume 68, Number 76, Page 19444. The NJDEP, by its endorsement herein, acknowledges that the Defendant Property has been remediated to residential cleanup standards under applicable New Jersey laws and regulations.

P. In 2002, Interested Parties and the United States entered into a mediation, which resulted in an agreement to share proceeds from the sale or auction of Defendant Property, as provided below. The agreement was predicated, in part, upon the Borough's adoption of a Redevelopment Plan, pursuant to N.J.S.A. 40:12A-1 *et seq.*, that shall include rezoning the

Defendant Property for residential development.

Q. The Defendant Property is currently zoned ALI - Light Industrial and I - Industrial.

R. On September 30, 2004, the Borough of Wallington adopted a resolution (Attachment E) declaring that an area in the vicinity of Mt. Pleasant Avenue, including the Defendant Property, "is an area in need of redevelopment."

S. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has jurisdiction over the Parties and Defendant Property. The Parties consent to and shall not challenge entry of this Consent Decree

on the basis of this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon: the United States; the Administrator of the New Jersey Spill Compensation Fund; the New Jersey Department of Environmental Protection; the Borough of Wallington; Lipwall, Inc., its successors and assigns; and Jerry Lippman, his heirs, successors and assigns. Any transfer of assets or real or personal property, or any change in legal status, including but not limited to any change in the status of any Party, shall in no way alter the status or responsibilities of such Party, including heirs, successors or assigns, under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "Appraisal Reports" means the appraisals on the Defendant Property to be performed pursuant to 28 U.S.C. § 2001(b) by three disinterested persons to be appointed by the Court or, at the Court's discretion, the United States Marshals Service following the adoption by the Borough of Wallington of the Redevelopment Plan, as provided in Paragraph 12 below. The cost of the Appraisal Reports shall be paid from the proceeds of the sale of the Defendant Property, as provided in Paragraph 15 below.

b. "Bona Fide Purchaser" means a buyer of the Defendant Property who purchases at Fair Market Value and at arm's length, and is not:

1) liable, or affiliated with any other person or entity that is potentially liable, for response costs at the Defendant Property or related in any way to a potentially liable person or entity by, including but not limited to:

a) any direct or indirect familial relationship; or
b) any direct or indirect contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the

Defendant Property is conveyed or financed or by a contract for the sale of goods or services); or

2) the result of:

a) reorganization of a business entity that was liable for response costs;

b) creation of a new business entity which has any individual as shareholder, partner, or creditor who was a shareholder, partner, or creditor in Carlstadt Moshen Realty Corporation or any prior owner or operator of the Property; or

c) transfer to an existing entity that has any shareholder, partner, or creditor who was a shareholder, partner or creditor in Carlstadt Moshen Realty Corporation or any prior owner or operator of the Property.

c. "Borough" means the Borough of Wallington, New Jersey.

d. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 - 9675.

e. "Consent Decree" means this Consent Decree and all appendices attached hereto. In the event of conflict between the body of

this Consent Decree and any appendix, the Consent Decree shall control.

f. “Day” means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

g. “Defendant Property” means the real property located at 350 Mount Pleasant Avenue, Borough of Wallington, New Jersey, also known as the Industrial Latex Superfund Site, consisting of approximately 9.67 acres of land, including the parcels identified herein as the Wallington Withdrawal, as described and depicted generally on the map and property description attached as Attachment B.

h. “DOJ” means the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

i. “EPA Hazardous Substance Superfund” means the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. “Fair Market Value” means the price at which a property would change hands between a willing buyer and a willing seller at arm’s

length and under actual market conditions, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

k. "Interest" means interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

l. "Interested Parties" means the Administrator of the New Jersey Spill Compensation Fund, the New Jersey Department of Environmental Protection, the Borough of Wallington, Jerry Lippman and Lipwall, Inc.

m. "Natural resource damages" shall mean: (1) damages recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, or Section 1006 of the Oil Pollution Act, 33 U.S.C. § 2706, Section 311 of the Clean Water Act, 33 U.S.C. § 1321, for injury to destruction of, or loss of any and all natural resources relating to the Site, including the reasonable costs of assessing such damages; and/or (2) damages recoverable under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 through 23.24, and/or under common law relating to such injury, destruction or loss, including the

reasonable costs and expenses of restoring the natural resources of New Jersey or for damage to the natural resources of New Jersey and to the public trust therein.

n. "Net Sales Proceeds" means the total value of all consideration for the Transfer of the Defendant Property less the cost of the three (3) Appraisal Reports, as provided in Paragraph 15 below.

o. "Non-municipal Parties" or "Non-municipal Party" means the United States, the Administrator of the New Jersey Spill Compensation Fund, the New Jersey Department of Environmental Protection, Jerry Lippman and Lipwall, Inc.

p. "Paragraph" means a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

q. "Parties" means the United States and the Interested Parties.

r. "Redevelopment Plan" means a plan adopted by the Borough of Wallington pursuant to N.J.S.A. 40A:12A-1 *et seq.* for the redevelopment or rehabilitation of all or part of a redevelopment area, or area in need of rehabilitation, which plan shall be sufficiently complete to indicate, as appropriate, its relationship to definite municipal objectives as to

appropriate land uses, public transportation and utilities, recreational and municipal facilities, and other public improvements; to indicate, as appropriate, proposed land uses and building requirements in the redevelopment area or area in need of rehabilitation, or both; and which plan shall provide for and legally adopt by ordinance residential land uses for the Defendant Property, except for those parcels identified as the Wallington Withdrawal.

s. "Response Costs" means all costs, including but not limited to direct and indirect costs, that U.S. EPA or DOJ on behalf of U.S. EPA has paid or incurred in connection with the Defendant Property through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

t. "Redevelopment Property" means the Defendant Property as designated by the legal descriptions set forth in Attachment C, which does not include the portion identified as the "Wallington Withdrawal" described in Attachment D.

u. "Section" means a portion of this Consent Decree identified by a roman numeral.

v. "State Response Costs" means all costs, including but not

limited to direct and indirect costs, that the New Jersey Department of Environmental Protection and the New Jersey Spill Compensation Fund have paid or incurred in connection with the Defendant Property through the date of lodging of this Consent Decree, plus accrued interest on all such costs through such date.

w. "Transfer" means each conveyance by Marshals Deed under the terms of sale contained in the Consent Decree.

x. "United States" means the United States of America, including its departments, agencies and instrumentalities.

y. "U.S. EPA" means the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

z. "Wallington Withdrawal" means the two sub-divisions of the Defendant Property to be utilized for a public purpose, and designated by the legal descriptions set forth in Attachment D.

V. REDEVELOPMENT OF THE PROPERTY

4. To facilitate the redevelopment or rehabilitation of an area that includes the Defendant Property, the Borough of Wallington shall adopt a Redevelopment Plan, pursuant to N.J.S.A. 40A:12A-1 *et seq.*, not later than

eighteen (18) months after the entry of this Consent Decree by the Court.

5. If the Borough does not adopt a Redevelopment Plan within eighteen (18) months after the entry of this Consent Decree, the amount of the Net Sale Proceeds payable to the Borough (as set forth in Paragraph 7.b below) shall be reduced permanently and irrevocably by one (1) percent on the first day of each month thereafter for 23 months, if a Redevelopment Plan is not adopted, until the Borough's share of the proceeds described in Section VI shall be completely extinguished, as further described in Paragraph 17 below, or until the Borough adopts a Redevelopment Plan.

VI. PAYMENTS

6. The Clerk of the Court shall pay from the Net Sale Proceeds deposited in the Court's Registry pursuant to Paragraph 14 below:

- a. \$40,662.47 to the New Jersey Spill Compensation Fund (NJSCF) pursuant to instructions set forth in Section VI, Paragraph 8;
- b. Twenty-three percent (23%) of the remaining Net Sales Proceeds (i.e., the Net Sales Proceeds minus the \$40,662.47 paid to the NJSCF) to the Borough subject, however, to the conditions in Paragraphs 4 and 5 above;
- c. Twenty-three percent (23%) of the remaining Net Sales

Proceeds (i.e., the Net Sales Proceeds minus the \$40,662.47 paid to the NJSCF and subject to the conditions in Paragraphs 4 and 5 above) to Jerry Lippman (for himself and Lipwall, Inc.), minus \$22,500 from this amount which shall be paid pursuant to instructions set forth in Section VI, Paragraph 8 to the New Jersey Department of Environmental Protection and the New Jersey Spill Compensation Fund in satisfaction of the State Response Costs and Natural Resource Damages in this matter;

d. Three percent (3.00)% of the remaining Net Sales Proceeds (i.e., the Net Sales Proceeds minus the \$40,662.47 paid to the NJSCF and subject to the conditions in Paragraphs 4 and 5 above) to the NJSCF and the New Jersey Department of Environmental Protection, which shall be paid pursuant to instructions set forth in Section VI, Paragraph 8 in satisfaction of the State Response Costs and Natural Resource Damages in this matter;

e. The remaining balance of the Net Sale Proceeds to the EPA Hazardous Substances Superfund;

f. Any of the Borough's 23% share of the Net Sale Proceeds that is forfeited pursuant to Sections V and VIII due to a failure to timely adopt a Redevelopment Plan within eighteen (18) months after the entry of

this Consent Decree shall be distributed to the other Parties as follows:

- 1) 27.35% to Jerry Lippman;
- 2) 3.69% to the NJSCF and NJDEP; and
- 3) the balance to the EPA Superfund.

7. Payment to the EPA Hazardous Substance Superfund shall be made by Electronic Funds Transfer (“EFT”) in accordance with current EFT procedures to be provided to the Clerk of the Court by the United States Attorney’s Office for the District of New Jersey. Each EFT shall reference the name and address of the party making payment, the Site name, the U.S. EPA Region and Site/Spill ID Number 05 XE, and DOJ Case Number 90-11-3-07502.

8. Payment to the New Jersey Spill Compensation Fund and the Department of Environmental Protection shall be made by check made payable to “Treasurer, State of New Jersey” and mailed to Section Chief, Cost Recovery/NRD Section, R.J. Hughes Justice Complex, 25 Market Street, P.O. Box 093, Trenton, New Jersey 08625.

9. Payment to the Borough of Wallington shall be made by check made payable to the “Borough of Wallington” and mailed to Borough of Wallington, 24 Union Boulevard, Wallington, New Jersey 07057.

10. Payment to Lipwall, Inc. and Jerry Lippman shall be made by check made payable to "Sokol, Behot & Fiorenzo Trust Account" and mailed to Leon J. Sokol, Esq. Sokol, Behot & Fiorenzo, Continental Plaza, 433 Hackensack Avenue, Hackensack, New Jersey 078601.

11. At the time of any payment(s), notice that payment(s) has (have) been made shall be sent according to the specifications in Section XIII (Notices and Submissions).

VII. EXECUTION AND SALE OF DEFENDANT PROPERTY

12. Sale of the Defendant Property if a Redevelopment Plan is adopted by the Borough: Following entry of this Consent Decree, sale of the Defendant Property shall proceed in accordance with 28 U.S.C. § 2001(b) (Sale of realty generally) and § 2002 (Notice of sale of realty) under the auspices of the United States Marshals Service within 90 days of the entry of this Consent Decree or the Borough's adopting a Redevelopment Plan, whichever occurs later, subject, however, to the condition that there shall be a minimum offer in the amount of two-thirds (2/3) of the average Fair Market Value established by three Appraisal Reports for a sale of the Defendant Property.

13. The sale of the Defendant Property shall take place at the United

States Courthouse, 50 Walnut Street, Newark, New Jersey, and it shall proceed according to the requirements for confirmation of a private sale pursuant to 28 U.S.C. § 2001(b), including publication and opportunity for a Bona Fide Purchaser to make an acceptable offer at least 10% greater than the published offer.

14. Upon full payment by a Bona Fide Purchaser in cash, or secure cash equivalent, of an amount not less than two-thirds (2/3) of the average Fair Market Value established by three Appraisal Reports, the Marshals Service shall issue two Deeds: (1) a Deed conveying title in the Redevelopment Property, as described in Attachment C, to the Bona Fide Purchaser; and (2) a Deed conveying title in the Wallington Withdrawal, as described in Attachment D, to the Borough. All recording costs and fees and taxes shall be paid by the purchaser or transferee. The Marshals Service shall deposit the full purchase price into the Registry of this Court as soon as practicable.

15. a. In the event that any Party claims reimbursement for the expense of any or all of the Appraisal Reports required pursuant to Paragraph 12 above, such Party shall file a motion for payment of the claim with the Court within 30 days of notice by the Marshals Service that the full

purchase price has been deposited into the Registry of this Court. The motion must be served to all other Parties in accordance with the local rules, and it shall be supported by a sworn declaration accounting for the expenses paid in connection with each Appraisal Report and certifying that the real estate appraiser retained pursuant to Paragraph 12 is an independent person with no relation to any of the Parties and with no known relation to and/or contact with any potential purchaser or developer of the Defendant Property with regard to the Defendant Property. If no objection to the claim for reimbursement is filed within 15 days, then the Clerk of the Court shall reimburse the claiming Party in full with funds on deposit from the sale of the Defendant Property. In the event of a written objection, the Clerk shall withhold payment pending resolution of the objection or an order of the Court. No Party shall be reimbursed in an amount greater than \$6,000 per Appraisal Report.

b. In the event that the Marshals Service, on behalf of any real estate appraiser, seeks payment for work performed in preparing any or all of the Appraisal Reports required pursuant to Paragraph 12 above, within 30 days of notice that it has deposited the full purchase price into the Registry of this Court, it (the Marshals Service) shall file an invoice for

payment for services rendered with the Court. The invoice shall be supported by a sworn declaration describing the services rendered and the amount due for such services and certifying that the real estate appraiser is an independent person with no relation to any of the Parties and with no known relation to and/or contact with a potential purchaser or developer of the Defendant Property as regards the Defendant Property. If no objection to the invoice for payment for services is filed within 15 days of the filing of the invoice, then the Clerk of the Court shall pay the real estate appraiser in full with funds on deposit from the sale of the Defendant Property. In the event of a written objection, the Clerk shall withhold payment pending resolution of the objection or an order of the Court.

16. Within 60 days of the Borough's adoption of the Redevelopment Plan, to facilitate the sale of the Defendant Property, as described in Paragraph 13 above, all Parties shall lodge with the Marshals Service an instrument for the discharge and release of their respective liens. Upon full payment by a Bona Fide Purchaser, as described in Paragraph 14 above, the Marshals Service shall tender to the Bona Fide Purchaser all such instruments, with the Deed for the Redevelopment Property, for the purpose of recording them as records of title.

17. If the sale of the Defendant Property is delayed by virtue of litigation challenging the Redevelopment Plan, the rezoning of the property, or any of the approvals granted by the Borough or its Planning Board or Board of Adjustment, or any other litigation which would prevent sale of the property, then in any of the aforementioned events, the time periods set forth in paragraphs 18 and 19 below shall be tolled from the date of institution of any such litigation until the date of entry and filing of a Final Judgment or Dismissal. The term "Final Judgment or Dismissal" shall mean the entry of a judgment or administrative order or decision and/or a dismissal, whether voluntary or judicial, and the expiration of the last appeal period in relation to the litigation referenced immediately above. Upon entry and filing of a Final Judgment or Dismissal, the aforementioned time periods shall continue to run once again as set forth in paragraphs 18 and 19. The period commencing on the date of institution of any such action and ending on the date of Final Judgment or Dismissal shall not be included in computing the running of any time limit under the terms of this Consent Decree. The tolling period shall not exceed 18 months, however, the Court shall retain jurisdiction for application to extend the tolling period upon good cause shown by the applicant.

VIII. BOROUGH FAILURE TO ADOPT REDEVELOPMENT PLAN

18. In the event that the Borough fails to adopt a Redevelopment Plan within eighteen (18) months following the entry of this Consent Decree by the Court, then its portion of the Net Sale Proceeds shall be reduced permanently and irrevocably, over the following 23 months, pursuant to the schedule described in Paragraph 5 above. The amount of the reduction in the payment to the Borough shall be redistributed to the other Parties pro rata, pursuant to Paragraph 6 above.

19. Sale of the Defendant Property if Redevelopment Plan is not adopted by Borough within 44 months of entry of Consent Decree by Court:

If the Defendant Property cannot be sold within 44 months of the entry of this Consent Decree in accordance with Paragraph 12, then the sale of the Defendant Property shall proceed in accordance with 28 U.S.C. § 2001(a) (Sale of realty generally) and § 2002 (Notice of sale of realty) under the auspices of the United States Marshals Service within 120 days of the first day of the 44th month following the entry of this Consent Decree. A public sale of the Defendant Property shall take place at the United States Courthouse, 50 Walnut Street, Newark, New Jersey. The Defendant Property will be sold in toto, as zoned, to a Bona Fide Purchaser for the

highest price bid.

20. Upon full payment by a Bona Fide Purchaser in cash, or secure cash equivalent, of the highest amount bid, the Marshals Service shall issue one Deed conveying title in the Defendant Property, as described in Attachment B, to the Bona Fide Purchaser. All recording costs and fees and taxes shall be paid by the purchaser or transferee. The Marshals Service shall deposit the full purchase price into the Registry of this Court as soon as practicable.

21. To facilitate the sale of the Defendant Property, as described in this Section, within thirty days of the first day of the 44th month following the entry of this Consent Decree, all Parties shall lodge with the Marshals Service an instrument for the discharge and release of their respective liens. Upon full payment by a Bona Fide Purchaser, as described in Paragraph 14 above, the Marshals Service shall tender to the Bona Fide Purchaser all such instruments, with the Deed for the Redevelopment Property, for the purpose of recording them as records of title.

22. If the United States, on behalf of U.S. EPA, brings an action against the Borough or Jerry Lippman or Lipwall, Inc. to enforce provisions of this Section or the preceding Section VII, the defending party shall

reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

IX. COVENANT NOT TO SUE BY THE UNITED STATES

23. Except as specifically provided in Section X (Reservations of Rights by the United States), the United States covenants not to sue or take administrative action against the Interested Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs. This covenant shall take effect upon receipt by the United States of all amounts required by Section VI (Payment of Response Costs). This covenant not to sue for each Interested Party is conditioned upon the satisfactory performance by each of the Interested Parties of their obligations under this Agreement. This covenant not to sue extends only to the settling Interested Parties and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY THE UNITED STATES

24. The United States reserves, and this Agreement is without prejudice to, all rights against the Interested Parties with respect to all other matters not expressly included within the Covenant Not to Sue by the United States in Paragraph 23. Notwithstanding any other provision of this Agreement, the United States reserves, and this Agreement is without

prejudice to, all rights against the Borough of Wallington, Lipwall, Inc., and Jerry Lippman with respect to:

- a. liability for failure of the Interested Parties to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability; and
- f. liability with respect to the future release or disposal of hazardous substances at the Defendant Property.

25. The United States reserves its rights under the "windfall lien" provision of CERCLA, 42 U.S.C. § 9607(r)(2), unless the Defendant Property or the Redevelopment Property is zoned for residential uses prior to sale pursuant to Paragraphs 13 or Paragraph 18 above. The United

States may file notice of a windfall lien before removing its Superfund lien pursuant to Paragraph 20 above.

26. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

XI. COVENANT NOT TO SUE BY THE INTERESTED PARTIES

27. The Interested Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs or this Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the U.S. EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Response Costs were incurred, including any claim under the United States Constitution, the Constitution of New Jersey, the Tucker Act,

28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs.

28. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

29. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Agreement. The United States and the Interested Parties each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not an Interested Party.

30. The United States and the Interested Parties agree that the actions undertaken by the Interested Parties in accordance with this Agreement do not constitute an admission of any liability by the Interested

Parties. The Interested Parties admit the validity of the facts or allegations contained in Section I of this Agreement.

31. The Parties agree that the Interested Parties are entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are all Response Costs.

32. Each Interested Party agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. Each Interested Party also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify the United States in writing within ten (10) days of service of the complaint or claim upon it. In addition, each Interested Party shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

33. In any subsequent administrative or judicial proceeding initiated by U.S. EPA, or by the United States on behalf of U.S. EPA, for injunctive relief, recovery of response costs, or other relief relating to the Defendant Property, the Borough of Wallington, Lipwall Inc. and Jerry Lippman shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by the United States set forth in Paragraph 23.

XIII. RETENTION OF RECORDS

34. For ten years after the entry of this Consent Decree, the Borough of Wallington, Jerry Lippman and Lipwall Inc. shall preserve and retain all records and documents now in their possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any retention policy to the contrary. The Interested Parties may also

request an earlier termination date of the document retention period set forth in this paragraph upon sale of the property at its highest and best use.

35. After the conclusion of the document retention period in the preceding paragraph, the Borough of Wallington, Jerry Lippman and Lipwall, Inc., shall notify U.S. EPA at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by U. S. EPA, these parties shall deliver any such records or documents to U.S. EPA. All of these parties may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal or state law. If one of these parties asserts such a privilege, that party shall provide: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other judicial or administrative settlement with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege

applies only to a portion of a document, the document shall be provided to U.S. EPA in redacted form to mask the privileged information only. When privilege is claimed, the claiming party shall retain all records and documents that they claimed to be privileged until U.S. EPA has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Interested Parties' favor.

36. By signing this Agreement, the Interested Parties certify that, to the best of their knowledge and belief, they have:

- a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to U.S. EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

- b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of a suit against the Interested Parties regarding the Site; and

c. fully complied with any and all U.S. EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XIV. NOTICES AND SUBMISSIONS

37. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the United States and the Interested Parties.

As to the United States:

DOJ
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ # 90-11-3-07502

Environmental Protection Agency
New Jersey Remediation Branch
Emergency and Remedial Response Division
U.S. EPA Region 2
290 Broadway

New York, NY 10007-1866
Attn: Industrial Latex Site Remedial Project Manager

New Jersey Superfund Branch
Office of Regional Counsel
U.S. EPA Region 2
290 Broadway
New York, NY 10007-1866
Attn: Industrial Latex Site Attorney

Chief, Financial Management Branch
U.S. EPA Region 2
290 Broadway, 29th Floor
New York, NY 10007-1866

As to Interested Parties:

New Jersey Spill Compensation Fund and NJDEP
Section Chief
Cost Recovery/NRD Section
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 093
Trenton, NJ 08625-0093

Borough of Wallington
Mr. Vic Baginski, Clerk
Borough of Wallington
24 Union Blvd.
Wallington, New Jersey 07057-1219

DeCotiis, FitzPatrick, Gluck & Cole, LLP
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666

Jerry Lippman and Lipwall, Inc.
Leon J. Sokol, Esq.
Sokol, Behot and Fiorenzo
433 Hackensack Avenue
Hackensack, New Jersey 07601

XV. RETENTION OF JURISDICTION

38. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree, including any proceedings resulting from the Borough's failure to adopt a Redevelopment Plan.

XVI. INTEGRATION

39. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. This Consent Decree incorporates the following attachments:

Attachment A EPA Cost Summaries, Industrial Latex Superfund Site, 350 Mt. Pleasant Avenue, Borough of Wallington, Bergen County, New Jersey;

Attachment B Map and Legal Description of Defendant Property, known as the Industrial Latex Superfund Site, comprising 9.67 Acres of Land, 350 Mt. Pleasant Avenue, Borough of

Wallington, New Jersey;

- Attachment C Legal Description for the Redevelopment Property;
- Attachment D Legal Description for the Wallington Withdrawal; and
- Attachment E Resolution of the Borough of Wallington (September 30, 004).
- Attachment F Model Discharge and Release of Lien Against Defendant Property

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

40. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. The Interested Parties consent to the entry of this Consent Decree without further notice.

41. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. EFFECTIVE DATE

42. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XIX. SIGNATORIES/SERVICE

43. The undersigned representatives of Interested Parties and the United States, or their duly designated representatives, certify that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

44. Interested Parties hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree.

45. Interested Parties shall identify, on the attached signature pages, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Interested Parties hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and

any applicable local rules of this Court, including but not limited to, service of a summons.

XX. MISCELLANEOUS FEES

46. In accordance with 29 U.S.C.A. § 1914 (and the accompanying notes thereto), any miscellaneous fees for holding, handling or disbursing any monies held for the benefit of the United States by the Registry of this Court under this Decree shall not be imposed.

XXI. FINAL JUDGMENT

47. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the Parties. The Court specifically adopts as findings by this Court the assertions made in Paragraph H in Section I (Background). The Court further finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXII. SECURITY AND MAINTENANCE OF THE SITE PROPERTY

48. The Borough shall maintain the Defendant Property in a secure and presentable condition, so that the Defendant Property's appearance to prospective purchasers will not be adversely affected, until it is sold under the terms of this Consent Decree.

SO ORDERED THIS ____ DAY OF _____, 2005.

United States District Court Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of U.S. v. 9.67 Acres of Land More or Less, Borough of Wallington, Bergen County, New Jersey, Civil Action No. 01-CV-3382 relating to the Industrial Latex Superfund Site.

FOR THE UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

Date: 12/7/05

✓ SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment & Natural Resources Division
Washington, D.C. 20530

Date: 12/7/05

ELLIOT M. ROCKLER
Trial Attorney
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 514-2653

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

SUSAN CASSELL
Assistant United States Attorney
Peter Rodino Federal Building
970 Broad Street, Suite 700
Newark, NJ 07102

FOR THE UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY

Date: 9-13-05

GEORGE PAVLOU, Director
Emergency and Remedial Response
Division, Region 2
U.S. Environmental Protection Agency

Date: 9/13/05

DAMARIS URDAZ CRISTIANO
Assistant Regional Counsel, Region 2
U.S. Environmental Protection Agency

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. 9.67 Acres of Land More or Less, Borough of Wallington, Bergen County, New Jersey, Civil Action No. 01-CV-3382 relating to the Industrial Latex Superfund Site.

FOR INTERESTED PARTY

Date: 9/7/05

Name: Walter G. Wargacki
Title: Mayor
Address: Senior/Civic Center
Union Boulevard
Wallington, NJ 07057

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Victor Baginski

Title: Borough Clerk

Address: Senior/Civic Center
Union Boulevard
Wallington, NJ 07057

FOR THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Date: 9/7/05

JOSEPH J. SEEBODE
Assistant Commissioner
Site Remediation and Waste
Management

Date: 9/7/05

JOHN S. WATSON, JR.
Assistant Commissioner
Natural and Historic Resources

FOR THE NEW JERSEY SPILL COMPENSATION FUND:

Date: 9-7-2005

LEONARD ROMINO
Administrator
New Jersey Spill Compensation Fund

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. 9.67 Acres of Land More or Less, Borough of Wallington, Bergen County, New Jersey, Civil Action No. 01-CV-3382 relating to the Industrial Latex Superfund Site.

FOR INTERESTED PARTY

Date: 5/20/2005

Name: Jerry Lippman

Title: Individually

Address: 1225 River Road, Apt. 6B
Edgewater, NJ 07020

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Title:

Address:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of U.S. v. 9.67 Acres of Land More or Less, Borough of Wallington, Bergen County, New Jersey, Civil Action No. 01-CV-3382 relating to the Industrial Latex Superfund Site.

FOR INTERESTED PARTY

LIPWALL, INC.

Date:

5/20/2005

Name: Jerry Lippman

Title: President

Address: 1225 River Road, Apt. 6B
Edgewater, NJ 07020

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Title:

Address:

Attachment A

EPA Cost Summaries for the Industrial Latex Site

Attachment B

Legal Description of Defendant Property, known as the Industrial Latex Superfund Site, comprising 9.67 Acres of Land, 350 Mt. Pleasant Avenue, Borough of Wallington, New Jersey

Attachment C

Description for the Redevelopment Property

Attachment D

Description of the Wallington Withdrawal from Defendant Property

Attachment E

Resolution of the Borough of Wallington (September 30, 2004).

Attachment F

Parties' Forms for Discharge and Release of Lien Against Defendant Property

Attachment A
EPA Cost Summaries for the Industrial Latex Site

Itemized Cost Summary
INDUSTRIAL LATEX, SITE ID = 02 M3
RECONCILED SCORPIOS REPORT
ALL COSTS TO DATE

REGIONAL PAYROLL COSTS	\$343,044.50
HEADQUARTERS PAYROLL COSTS	\$647.09
EPA INDIRECT COSTS	\$8,813,077.33
REGIONAL TRAVEL COSTS	\$4,512.34
HEADQUARTERS TRAVEL COSTS	\$814.94
ALTERNATIVE REMEDIAL CONTRACT SUPPORT (ARCS)	
ICF TECHNOLOGY, INC. (68-W8-0124)	\$1,763,651.16
CDM FEDERAL PROGRAMS CORPORATION (68-W9-0024)	\$106,527.56
EMERGENCY REMOVAL CLEANUP (ERC) CONTRACT	
O. H. MATERIALS (68-01-6893)	\$1,333,127.53
OHM REMEDIATION SERVICES CORPORATION (68-S3-2001)	\$57,844.00
S & D ENVIRONMENTAL SERVICES, INC. (68-W8-0102)	\$12,708.81
WESTINGHOUSE HAZTECH, INC. (68-W9-0016)	\$1,029.05
ENFORCEMENT SUPPORT SERVICES (ESS) CONTRACT	
TRC ENVIRONMENTAL CORPORATION (68-W4-0020)	\$9,356.76
TECHLAW, INC (68-W9-9019)	\$1,466.64
ENVIRONMENTAL SERVICES ASSISTANCE TEAMS (ESAT)	
ROY F. WESTON, INC. (68-01-7443)	\$20,650.08
LOCKHEED ENGINEERING & SCIENCES COMPANY (68-D1-0158)	\$7,663.21
LOCKHEED ENVIRONMENTAL SYSTEMS & TECH CO. (68-D6-0002)	\$8,245.93
FIELD INVESTIGATION TEAM (FIT) CONTRACT	
NUS CORPORATION (68-01-7346)	\$861,205.25
INTERAGENCY AGREEMENT (IAG)	
U.S. GEOLOGICAL SURVEY (DW14038401)	\$22,400.00

Itemized Cost Summary
INDUSTRIAL LATEX, SITE ID = 02 M3
RECONCILED SCORPIOS REPORT
ALL COSTS TO DATE

U.S. GEOLOGICAL SURVEY (DW14261601)	\$100,000.00
DEPARTMENT OF INTERIOR (DW14941525)	\$325.94
DEPARTMENT OF THE ARMY (DW96314301)	\$3,835.90
ARMY CORPS OF ENGINEERS (DW96941633)	\$845,932.24
ARMY CORPS OF ENGINEERS (DW96941705)	\$1,106,743.19
ARMY CORPS OF ENGINEERS (DW96941781)	\$24,895,496.87
OTHER EXPENDITURES (OTH)	
INTEGRATED SUPPORT SYSTEMS, INC. (68-R2-9904)	\$575.39
REMEDIAL (REM) CONTRACT	
EBASCO (68-01-7250)	\$1,247,468.33
STATE COOPERATIVE AGREEMENT (SCA)	
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION (289489)	\$57,457.00
TECHNICAL ASSISTANCE TEAM (TAT) CONTRACT	
ROY F. WESTON, INC. (68-01-6669)	\$161,292.83
ROY F. WESTON, INC. (68-01-7367)	\$49,204.51
ROY F. WESTON, INC. (68-W0-0036)	\$49,639.59
TECHNICAL ENFORCEMENT SUPPORT (TES) CONTRACT	
CDM FEDERAL PROGRAMS CORPORATION (68-01-7331)	\$10,538.69
CDM FEDERAL PROGRAMS CORPORATION (68-W9-0002)	\$22,954.90
ALLIANCE TECHNOLOGIES CORPORATION (68-W9-0003)	\$4,712.55
CONTRACT LAB PROGRAM (CLP) COSTS	
FINANCIAL COST SUMMARY	\$668,940.56
MISCELLANEOUS COSTS (MIS)	\$677.52
Total Site Costs:	\$42,593,768.19

Attachment B

Legal Description of Defendant Property, known as the Industrial Latex Superfund Site, comprising 9.67 Acres of Land, 350 Mt. Pleasant Avenue, Borough of Wallington, New Jersey

Attachment B

Legal Description of Defendant Property, known as the Industrial Latex Superfund Site, comprising 9.67 Acres of Land, more or less, located at 350 Mt. Pleasant Avenue, Borough of Wallington, New Jersey:

A tract or parcel of land and premises situated in the Borough of Wallington in the County of Bergen and State of New Jersey, which is bounded and described as follows:

Beginning at a point on the southeasterly line of Mt. Pleasant Avenue distant thereon 376.49 feet northerly from the intersection of the southeasterly line of Mt. Pleasant Avenue and the northerly line of Spring Street and running thence

(1) Northerly 41 degrees 16 minutes East 667.23 feet; thence

(2) South 43 degrees 30 minutes East 524.06 feet; thence

(3) Southerly 24 degrees 20 minutes West 85.39 feet; thence

(4) South 56 degrees 2 minutes East 35.15 feet; thence

(5) South 29 degrees 41 minutes West 569.24 feet; thence

(6) North 44 degrees 3 minutes West 8.18 feet; thence

(7) South 29 degrees 41 minutes West 29.66 feet; thence

(8) North 44 degrees 3 minutes West 711.56 feet

to the point in said southeasterly line of Mt. Pleasant Avenue and point or place of beginning.

Attachment C
Description of the Redevelopment Property

ATTACHMENT C

Description of the Redevelopment Property:

A tract or parcel of land and premises situated in the Borough of Wallington in the County of Bergen and State of New Jersey, which is bounded and described as follows: Beginning at a point on the southeasterly line of Mt. Pleasant Avenue distant thereon 376.49 feet northerly from the intersection of the southeasterly line of Mt. Pleasant Avenue and the northerly line of Spring Street and running thence

(1) Northerly 41 degrees 16 minutes East 667.23 feet; thence

(2) South 43 degrees 30 minutes East 524.06 feet; thence

(3) Southerly 24 degrees 20 minutes West 85.39 feet; thence

(4) South 56 degrees 2 minutes East 35.15 feet; thence

(5) South 29 degrees 41 minutes West 569.24 feet; thence

(6) North 44 degrees 3 minutes West 8.18 feet; thence

(7) South 29 degrees 41 minutes West 29.66 feet; thence

(8) North 44 degrees 3 minutes West 711.56 feet.

to the point in said southeasterly line of Mt. Pleasant Avenue and point or place of beginning *and diminished as to the following parcels:*

Wallington Withdrawal No. 1, a tract or parcel of land, which is bounded and described as follows: Beginning at the intersection of the southeasterly line of Mount Pleasant Avenue and Wagner Avenue in the Borough of Wallington and then running northeasterly 100 feet; then southeasterly on a line perpendicular to Mount Pleasant Avenue 30 feet; then southwesterly on a line parallel to Mount Pleasant Avenue 100 feet; then northwesterly on a line perpendicular to Mount Pleasant Avenue 30 feet to the point of beginning, approximately 3000 square feet total; and

Wallington Withdrawal No. 2, a tract or parcel of land, which is bounded and described as follows: Beginning at the southwest corner of Lot 80 T.M. then North 44 degrees 3 minutes West 8.18 feet; then South 29 degrees 41 minutes West 29.66 feet; then North 44 degrees 3 minutes West 200 feet; then northeasterly 200 feet; then southeasterly parallel to the first boundary line 140 feet; then southwesterly 210 feet to the point of beginning, approximately 34,000 feet.

The Wallington Withdrawal parcels will be surveyed and described accordingly in the Redevelopment Plan to be adopted by the Borough of Wallington prior to sale of the Defendant Property pursuant to Section VII of Consent Decree. The survey

descriptions of the Wallington Withdrawal parcels that are incorporated in the Redevelopment Plan will be provided to the Parties to this Consent Decree and the United States Marshals Service, which shall use these survey descriptions to prepare the Deed conveying title in the Wallington Withdrawal as required by Paragraph 14 of this Consent Decree.

Attachment D

Description of the Wallington Withdrawal from Defendant Property

ATTACHMENT D

Description of the Wallington Withdrawal parcels:

Wallington Withdrawal No. 1, a tract or parcel of land, which is bounded and described as follows: Beginning at the intersection of the southeasterly line of Mount Pleasant Avenue and Wagner Avenue in the Borough of Wallington and then running northeasterly 100 feet along Mount Pleasant Avenue; then southeasterly on a line perpendicular to Mount Pleasant Avenue 30 feet; then southwesterly on a line parallel to Mount Pleasant Avenue 100 feet; then northwesterly on a line perpendicular to Mount Pleasant Avenue 30 feet to the point of beginning, approximately 3000 square feet total; and

Wallington Withdrawal No. 2, a tract or parcel of land, which is bounded and described as follows: Beginning at the southwest corner of Lot 80 T.M. then North 44 degrees 3 minutes West 8.18 feet; then South 29 degrees 41 minutes West 29.66 feet; then North 44 degrees 3 minutes West 200 feet; then northeasterly 200 feet; then southeasterly parallel to the first boundary line 140 feet; then southwesterly 210 feet to the point of beginning, approximately 34,000 feet.

NB: The Wallington Withdrawal parcels will be surveyed and described accordingly in the Redevelopment Plan to be adopted by the Borough of Wallington prior to sale of the Defendant Property pursuant to Section VII of Consent Decree. These survey descriptions will be provided to the Parties to this Consent Decree and the United States Marshals Service, which shall use them to prepare the Deed conveying title in the Wallington Withdrawal as required by Paragraph 14 of this Consent Decree.

Attachment E

Resolution of the Borough of Wallington (September 30, 2004)

BOROUGH OF WALLINGTON

RESOLUTION 2004 - 101

WHEREAS, the Mayor and Council of the Borough of Wallington by Resolution number 2002-117, authorized and directed that the Planning Board of the Borough of Wallington conduct preliminary investigation to determine whether the area of the Borough of Wallington in the vicinity of Mount Pleasant Avenue, more particularly known as Block Number 70, Lot(s) 78, 79, and 80; and Block Number 70.05, Lot 8.01 on the Tax Map of the Borough of Wallington, County of Bergen, State of New Jersey with property owners as set forth on the attached Borough of Wallington Planning Board Resolution which is incorporated, attached to and made a part of this resolution; and which said schedule is annexed hereto and made a part hereof, is or is not blighted or in need of rehabilitation, so as to prevent the existence of blighted conditions, to furnish notices, public advertisements, and conduct a hearing, and render a report thereon to the Mayor and Council; and

WHEREAS, the Borough and it's representatives having inspected all properties in the vicinity of the subject areas designated herein above for the purpose of determining the condition of said property and structures thereon; and

WHEREAS, the governing body/representatives/Borough Administrators/Clerk prepared a list of the subject properties for submission to the Planning Board for purposes of the said Board conducting the investigation required by N.J.S.A. 40A:12A-6; and

WHEREAS, the Planning Board of the Borough of Wallington conducted public hearings as set forth in the records of the Planning Board, relative to the proposed re-development area which notices were duly advertised in the newspaper and in the form as set forth and required by law, with notice of the hearing to all property owners within the designated renewal area as set forth in the records of the Planning Board; and

WHEREAS, all persons in attendance at the public hearings were given an opportunity for inquiry and the presentation of their positions with respect to the proposal; and

WHEREAS, by Resolution adopted by the Planning Board of the Borough of Wallington at a regular meeting on June 15, 2004, such Resolution being a part of, attached to and incorporated in this Resolution; whereby the Planning Board of the Borough of Wallington found and determined that the subject parcels of real property are an area of in need of re-development pursuant to N.J.S.A. 40A:12A-6; and

WHEREAS, the Mayor and Council of the Borough of Wallington has reviewed the foregoing report and findings of the Planning Board of the Borough of Wallington and conclude that a declaration of the subject are as herein above noted as an area in need of renewal and re-development would be in the best interests of the residents of the Borough of Wallington;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Wallington that the determination of the Planning Board of the Borough of Wallington that the subject re-development area as herein above defined and attached hereto, is an area in need of re-development, is hereby approved and that the Borough Council declares and determines that the said area be declared as an area in need of renewal and re-development pursuant to N.J.S.A. 40A:12A-6.

BE IT FURTHER RESOLVED, that the Borough Clerk/Administrator shall in accordance with N.J.S.A. 40A:12A-6 serve and/or mail copies of this determination and resolution upon any and all of those interested parties who are required to receive such notice.

Introduced by Calabrese, Seconded by Lepinski,

Roll Call: Baron Aye, Ryaby Aye, Calabrese Aye, Adzima Aye, Lepinski Aye, Furtak Abstain

Approved: September 30, 2004
Borough of Wallington

By: _____
Walter G. Wargacki, Mayor

Attest: _____
Witold T. Baginski, RMC
Borough Clerk

Attachment F

Parties' Forms for Discharge and Release of Outstanding Liens Against
Defendant Property

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



REGION II

OFFICE OF REGIONAL COUNSEL, 17th FLOOR

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

DISCHARGE AND RELEASE OF FEDERAL LIEN
(TO BE FILED IN THE MORTGAGE BOOK)

NOTICE IS HEREBY GIVEN by the United States of America that it has executed this instrument to effect the discharge and release of a Federal Lien, dated March 28, 1991, made by the United States Environmental Protection Agency on the lands and all real property now or formerly of Kauffman and Minter, Inc., located in Jobstown, Springfield Township, County of Burlington, New Jersey, and identified as Block 1601, Lot 1 on the Tax Map of Springfield Township and recorded in the County Clerk's Office of Burlington County, New Jersey on , in mortgage book , page .

The United States consents that this Discharge and Release of Federal Lien may be filed of record.

IN WITNESS WHEREOF, the United States has caused this instrument to be executed through the United States Environmental Protection Agency, and its attorney, in his official capacity as Deputy Regional Counsel of the United States Environmental Protection Agency, Region II.

Dated at New York, New York, this ____ day of _____, 2004.

UNITED STATES OF AMERICA and
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

United States of America)
State of New York)ss:
County of New York)

By: _____
Eric Schaaf
Deputy Regional Counsel
U.S.EPA - REGION II

On this ____ day of _____, 2004, there appeared personally before me the undersigned Notary, Eric Schaaf, known to me to be the Deputy Regional Counsel of the United States Environmental Protection Agency, Region II, and he acknowledged that he signed the foregoing DISCHARGE AND RELEASE OF FEDERAL LIEN in a representative capacity as the free and voluntary act and deed of the United States and its said Agency for the uses and purposes therein mentioned. GIVEN under my hand and official seal the day and year first stated above.

NOTARY PUBLIC in and for
the State of New York
My Commission Expires: _____

Prepared by: (print signor's name below signature)

DISCHARGE OF MORTGAGE

A certain Mortgage dated March 14, 1984 was made by

CARLSTADT MOSHEN REALTY CORP. c/o THOMAS A. BLUMENTHAL

To

JERRY LIPPMAN

This Mortgage was made to secure payment of \$955,000 and interest. It was recorded in the office of the county recording officer of Bergen County, New Jersey on April 10, 1984, in mortgage book 6660 on page 437.

This Mortgage was subsequently assigned by

JERRY LIPPMAN

To

LIPWALL, INC. , a New Jersey Corporation

on November 1, 1988. The Assignment of Mortgage was recorded in office of the county recording officer of Bergen County, New Jersey on November 3, 1988, in Assignment Book 912, page 343.

This Mortgage has been SATISFIED and DISCHARGED. It may now be discharged of record. This means that this Mortgage is now cancelled and void.

I sign and CERTIFY to this Discharge of Mortgage on _____, 2005.

Witnessed:

LIPWALL, INC.

By: Jerry Lippman, President

STATE OF NEW JERSEY :

: ss:

COUNTY OF BERGEN:

I CERTIFY that on _____, 2005 Jerry Lippman personally came before me and this person acknowledged under oath to my satisfaction, that:

(a) this person signed, sealed and delivered the attached document as President of Lipwall, Inc. , the corporation named in this document;

(b) the proper corporate seal was affixed; and

(c) this document was signed and made by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.

EXHIBIT "A"

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Borough of Wallington, in the County of Bergen and State of New Jersey:

BEGINNING at a point on the southeasterly line of Mt. Pleasant Avenue distant thereon 376.49 feet northerly from the intersection of the southeasterly line of Mt. Pleasant Avenue and the northerly line of Spring Street and running thence

1. Northerly 41° 16' East 667.23 feet; thence
2. South 43° 30' East 524.06 feet; thence
3. Southerly 24° 20' West 85.39 feet; thence
4. South 56° 02' East 35.15 feet; thence
5. South 29° 41' West 569.24 feet; thence
6. North 44° 03' West 8.18 feet; thence
7. South 29° 41' West 29.66 feet; thence
8. North 44° 03' West 711.56 feet to the point in said southeasterly line of Mt. Pleasant Avenue and point of place of beginning.

CONTAINING 9.67 acres and all in accordance with survey made by Peter R. Troast, Civil Engineer and Surveyor, March 1951.

BEING further known as Lot 220 in Block 70, 9.67 acres, as shown on 1926-27 Tax Map of Wallington, New Jersey.

BEING the same premises conveyed to Jack Schorr and Jerry Lippman, trading as Industrial Latex Co. by deed from Borough of Wallington, a municipal corporation, dated April 30, 1951 and recorded June 12, 1951 in the Bergen County Clerk's Office in Book 3212 of Deeds, Page 325.

BEING the same premises also conveyed by deed from Hilltop Homes, Inc., dated March 15, 1951 and recorded March 16, 1951 in the Bergen County Clerk's Office in Book 3183 of Deeds at page 584.

BEING the same premises conveyed to Jack Schorr by deed from Jack Schorr and Jerry Lippman, partners, trading as Industrial Latex Co. and Leah Schorr, wife of Jack Schorr, dated May 24, 1973, recorded June 7, 1973 in Book 5782 of deeds for Bergen County, page 152.

Now known as Lot 4 in Block 608 on the current tax assessment map of the Borough of Wallington.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Richard J. Hughes Justice Complex
25 Market Street
PO Box 093
Trenton, NJ 08625-0093
Attorney for Claimant

By: ♦
Deputy Attorney General
(609) ♦

SUPERIOR COURT OF NEW JERSEY
DOCKET NO. DJ-♦

_____	:	
NEW JERSEY SPILL COMPENSATION	:	
FUND,	:	
Claimant,	:	WARRANT OF SATISFACTION
v.	:	
♦,	:	
Discharger(s).	:	
_____	:	

TO: CLERK OF THE SUPERIOR COURT

WHEREAS, pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, specifically N.J.S.A. 58:10-23.11f. and/or g., judgment was entered for claimant New Jersey Spill Compensation Fund ("the Spill Fund") against ♦ in the amount of \$♦, which judgment was recorded as Docketed Judgment No. DJ-♦; and

WHEREAS, the claimant has received satisfaction for this judgment.

NOW THEREFORE, you are hereby directed and authorized to enter this acknowledgment of satisfaction on the record of the judgment, and for your so doing this shall be your sufficient warrant and discharge in that behalf.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Claimant

By: _____
◆
Deputy Attorney General

Dated:

CERTIFICATION

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

◆
Deputy Attorney General

Dated:

Spill Act Lien Warrant of Satisfaction (DOL).frm

LEONARD J. ROMINO
ADMINISTRATOR
New Jersey Spill Compensation Fund
401 E. State Street
PO Box 413
Trenton, New Jersey 08625-0413
(609) 292-1295

SUPERIOR COURT OF NEW JERSEY
DOCKET NO. DJ-♦

_____	:	
NEW JERSEY SPILL COMPENSATION	:	
FUND,	:	
Claimant,	:	WARRANT OF SATISFACTION
v.	:	
♦,	:	
Discharger(s).	:	
_____	:	

TO: CLERK OF THE SUPERIOR COURT

WHEREAS, pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, specifically N.J.S.A. 58:10-23.11f. and/or g., judgment was entered for claimant New Jersey Spill Compensation Fund ("the Spill Fund") against ♦ in the amount of \$♦, which judgment was recorded as Docketed Judgment No. DJ-♦; and

WHEREAS, the Claimant has received satisfaction for this judgment.

NOW THEREFORE, you are hereby directed and authorized to enter this acknowledgment of satisfaction on the record of the judgment,

and for your so doing this shall be your sufficient warrant and discharge in that behalf.

NEW JERSEY SPILL COMPENSATION FUND

By: _____
Leonard J. Romino, Administrator
New Jersey Spill Compensation Fund

Dated:

CERTIFICATION

I certify that the foregoing statements made by me are true.
I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Leonard J. Romino, Administrator
New Jersey Spill Compensation Fund

Dated:

ACKNOWLEDGMENT

On ♦, Leonard J. Romino, Administrator of the New Jersey Spill Compensation Fund personally came before me and stated to my satisfaction he:

- a. was the maker of this instrument; and
- b. was authorized and did execute this instrument as Administrator of the New Jersey Spill Compensation Fund, the entity named in this instrument.

I certify that the foregoing statements made by me are true.
I am aware that if any of the foregoing statements made by me are
willfully false, I am subject to punishment.

Name: ♦

Title: ♦

Dated:

PROOF BY SUBSCRIBING WITNESS

STATE OF NEW JERSEY)

SS.:

COUNTY OF MERCER)

On ♦, [Name of Subscribing Witness] personally came before me
and stated under oath to my satisfaction that ♦ [he/she]:

- a. was the subscribing witness to the signing of this
instrument; and
- b. this instrument was signed by Leonard J. Romino, who is
the Administrator of the New Jersey Spill Compensation
Fund, the entity named in this instrument, and who was
fully authorized to, and did, execute this instrument on
the New Jersey Spill Compensation Fund's behalf; and
- c. the subscribing witness signed this proof under oath to
attest to the truth of these facts.

Name: ♦ [Name of Subscribing
Witness]

Sworn and subscribed to before me
this day of , ♦

Spill Act Lien Warrant of Satisfaction (DEP).frm

Borough of Wallington

vs.

Carlstadt Moshen Realty Corp.

WARRANT TO DISCHARGE
TAX SALE CERTIFICATE

To: Kathleen Donovan, Clerk of the Count of Bergen, One Bergen County Plaza,
Hackensack, NJ 07601

WHEREAS, the above entitled municipality filed a Tax Sale Certificate which on _____, 19__, was recorded in the Bergen County Clerk's Office in Register of Cases Book _____ at page _____ in conjunction with the non-payment of real property taxes concerning lands located in the Borough of Wallington, County of Bergen, State of New Jersey more particularly described as follows:

Block 70, Lot 80; 350 Mt. Pleasant Avenue

WHEREAS, any and all outstanding claims with respect to the non-payment of said taxes have been settled and the municipality now wishes to abandon the above matter by the due execution of a form of discontinuance thereof, and

WHEREAS, in view of the abandonment of the municipalities intention to foreclose on the subject Tax Sale Certificate you are therefore requested and authorized to enter this discharge of the Tax Sale Certificate and for your so doing, this shall be your sufficient warrant and discharge in that behalf. The said Tax Sale Certificate is attached hereto and made a part hereof.

IN WITNESS WHEREOF, the above entitled Borough of Wallington has hereunto set its hand and seal this _____ day of _____ in the year Two Thousand Five.

Alice Cpykier, Tax Collector

Signed, sealed and delivered in the
presence of

Wiltold Baginski, Borough Clerk

STATE OF NEW JERSEY:

:SS.:

COUNTY OF BERGEN:

I CERTIFY that on _____, 2005, Alice Cpykier, Tax Collector of the Borough of Wallington personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document: and
 - (b) signed, sealed and delivered this document as his or her act and deed.
- _____

STATE OF NEW JERSEY :

:SS.:

COUNTY OF BERGEN :

I CERTIFY that on _____, 2005, WILTOLD BAGINSKI, BOROUGH CLERK personally came before me and this person acknowledged under oath, to my satisfaction, that:

- a. this person is the Borough Clerk of Borough of Wallington the municipal corporation named in this document;
- b. this person is the attesting witness to the signing of this document by the proper Borough officer who is Alice Cpykier the Tax Collector of the Borough;
- c. this document was signed and delivered by the Borough as its voluntary act duly authorized by a proper resolution of its Mayor and Council
- d. this person knows the proper seal of the corporation which was affixed to this document; and
- e. this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me
on _____, 2005.
